

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Sections 74.1203(a)(3) and)	RM No. 11786
74.1204(f) of the Commission's Rules to)	
Protect Local Radio Service Provided by)	
Fill-In Area FM Translators)	

**JOINT STATEMENT OF BROADCASTERS IN OPPOSITION TO PETITION FOR
RULE MAKING**

Alpha Media LLC
Beasley Media Group, LLC
Bemidji Radio Inc.
Bonneville International Corporation
Cox Media Group, LLC
Entercom Communications Corp.
iHeartMedia + Entertainment, Inc.
KMMY, Inc.
Perry Broadcasting of Southwest Oklahoma, Inc.

May 18, 2017

SUMMARY

Aztec Capital Partners, Inc. (“Aztec”) has petitioned the Commission to initiate a rule making proceeding to eliminate long-standing rules that protect all regular listeners of full service FM stations from interference caused, or projected to be caused, by FM translator stations. Aztec’s proposal would elevate FM translators, a secondary service exempted from public service obligations and key engineering requirements applicable to full service stations, to essentially equal status so long as the FM translator is a “fill-in” and no full service regular listeners subject to interference are within a theoretical “protected service contour.” Such a drastic change in the Commission’s treatment of FM translators as a secondary service is ill-advised, as it would disrupt valued service by full service FM stations to established listeners, and, by increasing caused and received interference, would lead to the “AM-ization” of the FM band.

The Commission has repeatedly stressed that FM translator stations were created as a secondary service not permitted to cause interference to full service FM stations. Aztec cites to the expansion of FM translator opportunities for AM stations and HD Channel rebroadcasts as justifying its proposed wholesale revamping of FM translator interference protections. Yet, the safeguards that would be eliminated under the Aztec proposal serve as critical barriers to the creation of interference to regular FM listeners, and thus are ever more important with the addition of more operating FM translators to the FM band. The windfall sought now by FM translator permittees such as Aztec would be made at the expense of the listening public and FM stations providing service to the public.

By proposing to halt all interference protection at the border of a full service station’s F(50,50) “protected service contour,” Aztec’s proposal fails to acknowledge that such a

contour is a *streamlined theoretical construct* and is not a “discrete” hard line that, under either the law of physics or the law of the Commission, terminates service to the public at its projected edge. Moreover, under the Aztec predicted contour based proposal, there would be no buffer zones from interference as incorporated into the minimum distance tables (in both Section 73.207 and Section 73.215) for full service FM stations. Inter-station interference has driven down AM listening; the Aztec proposal would increase interference caused and received by FM stations, slipping down the road to the AM-ization of the FM band. Such danger is only increased given that critical engineering standards for FM translator stations – such as those standards pertaining to interference buffer zones, directional antennas and received interference – are less stringent than those for full service FM stations.

Case studies comparing the “protected service contours” of full service FM stations, as predicted by the Commission’s F(50,50) curves (to be relied on under the Aztec proposal) and as predicted by the more sensitive Longley-Rice method, are presented. In one such study, the “Study Area” (which undercounts current actual signal reception) that would be subject to non-remediated fill-in FM translator interference includes a population of 1,705,000 persons. Audience data for that Study Area, documents that 25.5 *percent* of the total number of persons or households estimated to be tuned to that full service FM station for at least five minutes during an average fifteen-minute period, and 35.6 *percent* who tuned in at least once during the survey week, are within the Study Area. For an industry facing competition for listeners and advertisers from media not even contemplated in when the FM translator rules were established, full service FM stations cannot take the economic hit to their audience ratings that the Aztec Petition proposal would unleash.

Aztec attempts to bolster its argument for a fundamental change in the secondary

status of fill-in FM translators by citing to its perceived frustrations with the current Audio Division process for handling interference complaints due to FM translator operations. Yet, Aztec's grievance with obeying established and clear Commission rules that further a wise Commission policy does not warrant the wholesale change in the relationship of FM translators to other stations as proposed by Aztec. This ill-advised Aztec Petition proceeding is not the appropriate forum for improvements in the FM translator complaint process.

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To: The Commission

**JOINT STATEMENT OF BROADCASTERS IN OPPOSITION TO PETITION FOR
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By Petition for Rule Making dated April 7, 2017 (the "Aztec Petition"), Aztec Capital Partners, Inc. ("Aztec" or "Petitioner") requests that the Commission initiate a rule making proceeding to drastically revise its rules protecting full service radio stations and other broadcast stations against interference to their regular listeners from FM translator stations. The undersigned radio broadcasters (the "Collective Broadcasters") – a diverse group ranging from family-run regional broadcasters to nationwide, multi-market broadcasters – reaching rural, suburban and/or city populations – and utilizing/not utilizing FM translators – are filing this Statement collectively in opposition to the Aztec Petition. ^{1/} The rule changes proposed by the Aztec Petition would not just start the Commission down the slippery slope of equating secondary-service FM translators with primary-service full service FM stations, but would disrupt *full* service to established listeners, and lead to the "AM-itization" of the FM band through increased interference.

^{1/} The Commission issued a Public Notice, Report No. 3074, on April 18, 2017, setting May 18, 2017, as the deadline for statements opposing or supporting the Aztec Petition. *See also* 47 C.F.R. §§ 1.4 and 1.405.

I. THE AZTEC PETITION RULE CHANGES, IF ADOPTED, WOULD IN CRITICAL RESPECTS CONVERT A SECONDARY SERVICE INTO A PRIMARY SERVICE TO THE DETRIMENT OF ESTABLISHED FULL SERVICE FM STATION LISTENERS AND THE FM BAND

A. The Commission Squarely and Emphatically Authorized FM Translator Stations as a Secondary Service Not Permitted to Cause Interference to Full Service FM Stations

When the Commission first authorized FM translators in 1970, 2/ and again, in 1990, when the Commission overhauled its FM translator rules, 3/ the Commission squarely and clearly stressed that FM translator stations were created as a secondary service not permitted to cause interference to full service FM stations, stating, for example:

- “FM translators, like television translators, will be authorized on a no-interference basis. An FM translator will be authorized subject to the condition that it will not cause interference to off-the-air reception by the public of the signals of any other authorized station.” 4/
- “the Commission elected to authorize FM translators on a secondary basis only” 5/
- “The rule changes proposed in the Notice sought to ensure that translator service does not adversely affect the operation of FM radio broadcast stations.” 6/

2/ See *FM Translator and Booster Stations*, Report and Order, 20 RR 2d 1538 (1970) (“1970 Translator Order”).

3/ See *Amendment of Part 74 of the FM Commission's Rules Concerning Translator Stations*, 5 FCC Rcd 7212 (1990) (“1990 Translator Order”).

4/ See 1970 Translator Order at ¶ 3.

5/ 1990 Translator Order at ¶ 3.

6/ *Id.* at ¶ 5.

- “We continue to believe that the proper role for FM translators is that of a secondary service intended to supplement the service of FM radio broadcast stations.” 7/
- “We are aware of the need to clarify and amend several rules in order to ensure that FM radio broadcast stations are not adversely affected by translator operations.” 8/
- “We emphasize that translators are authorized on a secondary basis and are subject to displacement by FM radio broadcast stations.” 9/
- “This processing flexibility is consistent with our decision regarding conflicting applications and we believe it is appropriate for this secondary service that will still be subject to our prohibition on actual interference.” 10/
- “We are unpersuaded that a translator station is entitled to protection against an FM radio broadcast station or that the translator should be able to cause interference to an FM station or a TV Channel 6 station if the translator was in existence first. The absence of such an entitlement is a fundamental characteristic of the secondary nature of translator service.” 11/

Emphatically, the FM translator rules adopted by the Commission in 1970, and revised in 1990, placed protection from interference from FM translators to full service stations front and center of the regulatory regime, so that those applying for or acquiring FM translators knew (or should have known) the value and restrictions associated with this secondary service:

- An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to:
 - (1) the transmission of any authorized broadcast station; or

7/ *Id.*
8/ *Id.*
9/ *Id.* at ¶ 86.
10/ *Id.* at ¶ 128.
11/ *Id.* at ¶ 130.

(2) the reception of the input signal of any TV translator, TV booster, FM translator or FM booster station; or

(3) the direct reception by the public of the off-the-air signals of any authorized broadcast station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted. 12/

Likewise, at the application stage, the Commission adopted a specific safeguard that further protects regular users of full service stations who would be subject to interference from the proposed FM translator, codified at Section 74.1204(f), which provides:

An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.

As stated by the Commission, “pursuant to Section 74.1204(f), we will not grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted prohibited overlap.” 13/

Simply put, the Commission could not have been clearer that the authorization and continued operation of all FM translators will be allowed only when the FM translator does

12/ 47 C.F.R. § 74.1203(a) (as revised in *1990 Translator Order*, at Appendix B).

13/ *1990 Translator Order* at ¶ 128.

not cause interference to the reception of a full service FM signal, whenever and wherever such signal is regularly used. All FM translator applicants have known exactly what they were getting – a *secondary* service authorization that cannot interfere with *any* regular full service reception. The windfall sought now by FM translator permittees, such as Aztec, would be made at the expense of the listening public and FM stations providing service to the public while meeting stricter and costlier regulatory requirements.

B. The Aztec Petition Proposal Would Result in a Fundamental Change in the Secondary Status of FM Translators

Notwithstanding that time and time again the Commission in its Orders, and in the plain language of its rules, has stressed that all full service FM station listenership is to be protected from secondary FM translator interference, Aztec terms it a “full-circle perversion” that full service FM stations with regular listeners outside the full service station’s “protected contour” can, as has been the case since FM translators were adopted in 1970, limit or shut down FM translators causing unrepairable interference to such established listening. 14/

Aztec’s proposed solution to this perceived ill is that a “fill-in” FM translator – that is, an FM translator whose 60 dBμ contour is contained within a prescribed distance or contour of the primary station being rebroadcast 15/ – should only need to resolve interference complaints from listening within the “protected service contour” of the full service station suffering FM translator interference. 16/ Moreover, Aztec would carve out fill-in FM translator construction permit applications from the pre-grant defense of Section 74.1204(f). That would leave an authorized full service station with no pre-emptive recourse to protect its regular

14/ See Aztec Petition at 2.

15/ See 47 C.F.R. § 74.1201(h) and (j).

16/ See Aztec Petition at 3-4.

listeners from predicted FM translator interference merely because such listeners fall outside a theoretical contour established for other administrative purposes.

Thus, while Aztec claims that “[n]o change is requested in the secondary status of FM translators,” 17/ in critical respects, Aztec is proposing to transform fill-in FM translators into a primary service with near equal footing to existing full service FM stations. That is, under the Aztec proposal, once a fill-in FM translator meets the predicted, and by definition merely theoretical, signal contour overlap requirements of Section 74.1204(a), the FM translator would be placed on equal, primary footing with all previously authorized full service FM stations for interference caused to regular listeners outside the full service station’s theoretical service borders. Such previously authorized full service FM stations would have no redress for interference caused to their established listeners in the real world of radio signals reaching regular listeners outside a theoretical line.

C. The Expansion of FM Translators to Rebroadcast AM Stations and HD Channels Only Serves to Underscore the Need to Protect All Full Service FM Listeners From New Interference

When adopting and revising the FM translator service rules, the Commission summarized the intended purpose of this service, “which is to provide supplementary service to areas in which direct reception of radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers.” 18/

As noted by Aztec, 19/ the uses of FM translators have been broadened to include

17/ See Aztec Petition at 3.

18/ 1990 Translator Order at ¶ 1.

19/ See Aztec Petition at 2.

the rebroadcast of AM station signals and FM HD channel programming. These expansions of FM translator rebroadcasts are not, as Aztec would have it, grounds to undermine the secondary nature of FM translators and the established protections to full service station listenership.

Rather, the expansion of FM translator opportunities, and the explosion of operating FM translators (and those to-be authorized in future windows), 20/ only underscores the continued need to strictly maintain the secondary status of FM translators. The rule provisions that Aztec desires to be fundamentally altered serve as critical barriers to the creation of interference to regular FM listeners, and thus are ever more important with the addition of more operating FM translators to the band.

Notably, when the Commission amended its FM translator rules to authorize AM stations as a primary signal for FM translator rebroadcasts, it again emphasized the secondary status of FM translators: “We disagree that cross-service translating will fundamentally alter the nature of translator service. *** The proper role of FM translators is to provide secondary service to areas in which direct reception is unsatisfactory.” 21/ Moreover, the Commission emphasized at that time that FM translators should not become an avenue to obtain parity with full service FM stations, which, unlike FM translators, have public service obligations and multiple ownership limits. 22/ The expanded uses of FM translators – and thus

20/ The Commission observed that over 1,000 applications were granted to relocate FM translators to rebroadcast AM stations in the first two, of four, filing windows established by the Commission in the AM Revitalization proceeding. *See Revitalization of the AM Radio Service*, Second Report and Order, 32 FCC Rcd 1724, 1724 at ¶ 1 (2017).

21/ *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642, 9747 n.31 (2009) (“2009 Translator Order”).

22/ *2009 Translator Order* at ¶¶ 29 and 30.

the expanded opportunities to create new interference on the FM band – only strengthens the need to continue to protect full service FM station listeners from interference by continued application of the interference protections in Sections 74.1203(a)(3) and 74.1204(f).

D. A Full Service FM Station’s Protected Service Contour is a Theoretical Construct That Does Not Define That Station’s Actual Service to the Public

Aztec claims that full service FM stations are authorized by the Commission under Section 307(b) of the Communications Act, as amended, 23/ to service only “a community of license *and a discrete service area encompassed by the FM station’s licensed protected contour,*” and thus it is a “perversion” to protect regular listeners outside this protected service contour. 24/ However, it is Aztec that is twisting the significance of an FM station’s predicted “protected service contour.” That contour is a streamlined theoretical construct developed in the slide-rule era for administrative convenience; a “protected service contour” is not a “discrete” hard line that, under either the law of physics or the law of the FCC, terminates service to the public at its border.

Many, if not most, full service non-reserved band FM stations are assigned to their communities pursuant to the Commission’s spacing tables in Section 73.207, which prescribes the minimum spacing between classes of FM stations. 25/ For Section 73.207 spaced full service non-reserved band FM stations, other full service FM stations must respect the minimum spacing tables, not a specified contour. Such spacing tables provide a buffer zone that may well exceed a particular station’s predicted service contour.

23/ 47 U.S.C. § 307(b).

24/ See Aztec Petition at 4-5 (emphasis added).

25/ 47 C.F.R. § 73.207.

Other full service, non-reserved band FM stations have voluntarily chosen assignment pursuant to a protected and interfering contour-based system as set forth in Section 73.215 of the Commission's Rules. 26/ But even under Section 73.215 there is a minimum spacing table, which by requiring distance protection to all co- and adjacent channel full service stations, establishes a buffer zone in addition to the lack of predicted contour overlap. 27/

Consequently, contrary to Aztec's "hard border" concept, the listeners within these buffer zones most certainly are protected from predicted interference from proposed full service station modifications and new allotments due to the Commission's strict application of the spacing tables in Sections 73.207 and 73.215. Thus, Aztec is incorrect in suggesting that listeners outside a station's predicted protected service contour are not "protected."

As to FM translator assignments, at the *outset*, pursuant to Section 74.1204, the Commission employs a protected and interfering contour-based system using F(50,50) and F(50,10) curves. 28/ Thus, the buffer zones set forth in Sections 73.207 and 73.215 are not immediately incorporated into Section 74.1204. Instead, there are two critical fail-safe measures imposed by the Commission to ensure that there will be no *actual* interference to full service FM stations (and other pre-existing broadcast stations) from FM translators, both of which measures Aztec wants to eliminate for its kind of FM translator.

The first line of defense incorporated into the Commission's rules is that, notwithstanding a lack of predicted contour overlap, Section 74.1204(f) allows a co- or adjacent

26/ 47 C.F.R. § 73.215.

27/ See 47 C.F.R. § 73.215(e).

28/ See 47 C.F.R. § 74.1204(a), (b).

channel full service station to prevent the grant of an FM translator construction permit if the 1 mV/m contour of the proposed FM translator would cover a populated area already receiving a regularly used, off-the-air signal, and interference is predicted to result. Aztec would eliminate this protection when the interfering signal will be from a fill-in FM translator.

The second line of defense, again proposed by Aztec to be eliminated for fill-in FM translators, is the Section 73.1203(a) complaint process, which applies when actual interference is experienced by regular listeners of a full service station or other pre-existing broadcast stations. ^{29/} The Commission properly recognized that such regular listeners of primary service FM stations, no matter their location within or without a theoretical, simplified predicted contour, must be shielded from interference from the FM translator operation.

Under the Aztec Petition proposal, there would be no buffer zones from interference as incorporated into the minimum distance tables, and no two lines of defense against fill-in FM translator interference for regular listeners. The end result will be to knock off regular listeners from their favored full service station on the FM dial. Moreover, due to the laws of physics, neither that regular listener to the full service FM station, nor a listener to the FM translator, will enjoy a clear signal in that area. Inter-station interference has driven down AM listening. Tolerating interference from FM translators will lead to the AM-ization of the FM band.

The upshot of the Aztec Petition proposal is that, as long as there is no predicted contour overlap according to the FCC curves or no complainants within the full service station's

^{29/} Under Section 74.1203(a)(3), listeners that warrant remediation from FM translator interference may be regular listeners of any authorized full service broadcast station, plus may be listeners of "previously authorized and operating FM translators and FM booster stations." This Statement focuses on the impact of the proposed Aztec rule changes on listening to full service FM radio stations.

predicted service contour, the fill-in FM translator will be elevated to equal, primary service footing with its neighboring full service FM stations. Indeed, such a system would essentially involuntarily impose Section 73.215 status on every fully-spaced Section 73.207 FM station in relation to FM translators, but without the buffer of the Section 73.215 minimum spacing table. An exponential increase in received interference on the FM band will be the inevitable result.

E. Other Differences in Engineering Requirements Between Full Service FM Stations and FM Translators Warrant the Commission's Existing Interference Rules Protecting All Listeners of Full Service FM Stations

While Section 74.1204(a)/(b) employs a contour-based methodology for FM translator construction permit applications, that system is tempered by the provisions of Sections 74.1203(a)(3) and 74.1204(f) which ensure that no actual interference to regular full service station listeners will result. However, under Aztec's proposed scheme, which would eliminate these safeguards for fill-in FM translator interference, the listening public will be exposed to interference not forecast through contour-based methods.

Even worse, in many respects, the engineering standards for FM translator stations are less stringent than those for full service FM stations, thereby necessitating strict enforcement of the existing Sections 74.1203(a)(3) and 74.1204(f) safeguards when actual interference occurs. For example, full service FM stations must meet minimum separation requirements (under Section 73.207 or Section 73.215(e)) to second and third adjacent channel FM stations, whereas FM translators can be authorized with prohibited contour overlap to such adjacent channel stations via a *Living Way* showing. ^{30/} FM translator stations, unlike

^{30/} See *Living Way Ministries, Inc.*, 17 FCC Rcd 17054 (2002), *reconsideration denied*, 23 FCC Rcd 15070 (2008).

full service FM stations, are not required to provide a minimum signal strength service to their community of license. ^{31/} FM translators do not have to comply with the strict specifications set out in Section 73.316(b) that are applicable to directional antenna systems for full service FM stations. ^{32/} Nor do permittees of directional antenna systems of FM translators have to submit a measured proof of performance, a surveyor certification of correct installation, and an engineering certification, as do full service FM stations employing directional antennas. ^{33/} Another difference, one that would be harmful to the integrity of the FM band without the safeguards desired to be removed by Aztec, is that, unlike Section 73.215, which does not permit the modifying station to receive interference in its predicted service contour, FM translators could move close up to a full service FM station's protected contour and be subject to received interference within the FM translator's 60 dBμ contour, thus by-passing part of the buffering aspects of the spacing tables. It does no good to the health of the FM band to encourage additional received interference.

Without the safeguards of Sections 74.1203(a)(3) and 74.1204(f) that Aztec would eviscerate for fill-in translators, poorly- or aggressively-engineered FM translators could wreak havoc on full service station listenership, to the detriment of the public. Thus, without the minimum spacing buffers shielding full service FM stations and without the safeguards of 74.1203(a)(3) and 74.1204(f), and given that FM translators are held to less stringent engineering

^{31/} Cf. 47 C.F.R. § 73.315(a).

^{32/} See 47 C.F.R. § 73.316(b) (“Applications for the use of directional antennas that propose a ratio of maximum to minimum radiation in the horizontal plane of more than 15 dB will not be accepted;” “Directional antennas used to protect short-spaced stations pursuant to §73.213 or §73.215 of the rules, that have a radiation pattern which varies more than 2 dB per 10 degrees of azimuth will not be authorized.”).

^{33/} See 47 C.F.R. § 73.316(c).

standards, FM translators would be able to squeeze into zones right next to a full service FM station's predicted "protected service contour," where many regular listeners depend on the full service station's existing service. Examples of real life of actual station listening in these zones are examined next.

F. The Aztec Petition Proposal Would Allow New Interference to Areas With Significant Regular Full Service FM Listening, Thereby Undermining an Important Resource to the Public and Impacting the Economic Vitality of Full Service FM Stations

As explained above, Aztec makes the mistake of confusing a streamlined tool for administrative processing of FM construction permit applications – the F(50,50) and F(50,10) curve prediction of the service contour – with a hard boundary past which service to the public either does not exist, or if it does, in Aztec's view, does not deserve protection from FM translator interference. In fact, full service FM stations serve populations outside their theoretical F(50,50) curve-derived "protected service contour," which service is essential both to the listening public and to the economic vitality of full service stations.

Nevertheless, under the Aztec Petition proposal, only listening within the full service station's "protected service contour" (either the 54 dB μ , 57 dB μ or 60 dB μ , depending on the station class) and only that contour as predicted by the F(50,50) curves would be remediated from FM translator interference. By asserting that interference protection from fill-in FM translators should end at this artificial border, the Aztec proposal would subject actual full service listeners to destructive interference.

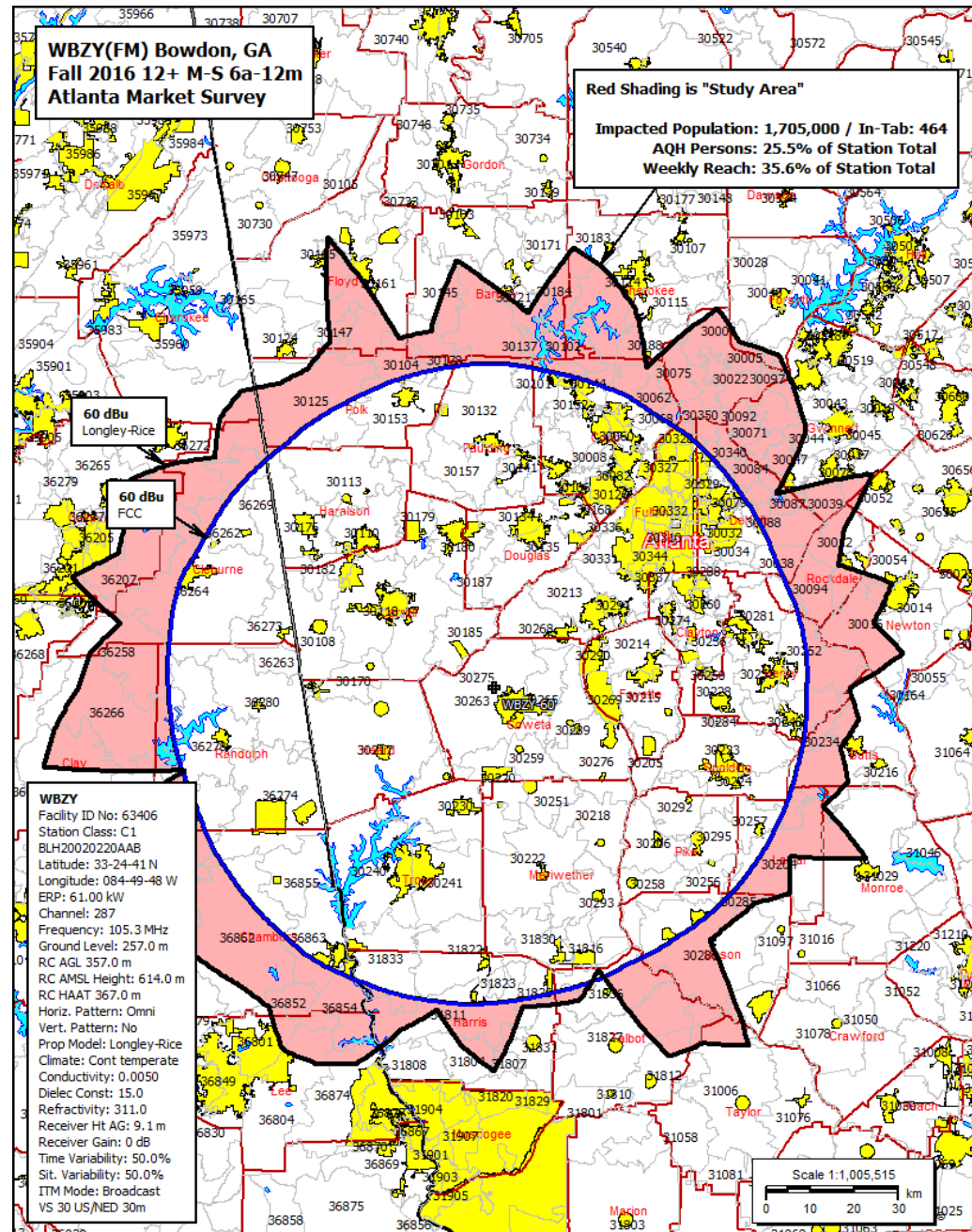
To illustrate the harm to the listening public from Aztec's proposal, the examples at Exhibit A map the "protected service contour" (in these case studies, the 60 dB μ) of each sample station calculated with F(50,50) curves, along with that signal strength contour as

determined by the Longley-Rice methodology. ^{34/} Of course, there can be, and there is, regular listening outside the 60 dBμ contour, no matter how calculated, which such listening Aztec's proposal would also be allowed to be negated. The focus of these studies is on the area between the F(50,50) and Longley-Rice 60 dBμ contours merely to highlight the significant impact on established listening of the Aztec proposal; the impacted numbers would only increase with additional studies outside the selected contours.

By way of example, Figure A-1 (attached at Exhibit A; also shown here), studies WBZY(FM), Bowdon, Georgia, a full service Class C1 FM station rated in the Atlanta Nielsen Audio Metro Market.

^{34/} The Commission, while preferring the simplicity of F(50,50)/F(50,10) curves for processing permit applications, has long recognized that other contour prediction methodologies, such as "Longley-Rice," are more sensitive to local conditions and thus are better predictors of signal propagation. *See, e.g., California-Oregon Broadcasting, Inc.*, 29 FCC Rcd 3833, 3836 at n.15 (Senior Deputy Chief, Policy Div., Media Bur. 2014) ("Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis."); *Skytower Communications – 94.3, LLC*, 27 FCC Rcd 5762 (Chief, Audio Div., Media Bur. 2012) (Media Bureau accepts, upon confirming analysis, Longley-Rice showings of compliance with the main studio rule location requirement when the location is shown as outside the appropriate service contour based on F(50,50) curves).

Figure A-1



The inner (blue line) contour is the Class C1 60 dBu “protected service contour” of WBZY(FM) as calculated with the F(50,50) curves. The outer (black line) contour is WBZY(FM)’s 60 dBu contour as calculated with the Longley-Rice method. The area shaded in red, termed the “Study Area,” is the sample studied area in which regular listeners of

WBZY(FM) would be subject to interference from an FM translator operation, but which, under the Aztec proposal would not be subject to interference remediation (along with even more extensive areas outside the 60 dB μ not considered merely for the purposes of study). Indeed, with the lack of minimum distance buffers as described above, under the Aztec proposal, even a fill-in FM translator operating with a 60 dB μ contour abutting the F(50,50) 60 dB μ contour of WBZY(FM) would not have to resolve interference complaints of regular listeners in the Study Area.

As shown on Figure A-1, the WBZY(FM) Study Area includes a population of 1,705,000 persons, by any measure, a significant population. Additionally, Nielsen Audience data was reviewed for the Study Area. ^{35/} Here, Nielsen audience data for Average Quarter Hour (“AQH”) listening ^{36/} for the zip codes primarily within the Study Area show that 25.5 percent of the total number of persons or households in the Atlanta market estimated to be tuned to WBZY(FM) for at least five minutes during an average fifteen-minute period *are within the Study Area*. Another measure of listening, the Weekly Reach, ^{37/} was reviewed for the zip codes primarily within the Study Area; those persons constitute 35.6 percent of the survey

^{35/} The “In-Tab” figure of 464 is the number of Nielsen participants (households or persons) supplying useable survey responses that are within the zip codes primarily within this Study Area. Data for zip codes with a portion inside the F(50,50) predicted contour have been excluded, and data for those zip codes encompassed in whole or in part by the Longley-Rice contour have been included, with the net effect of understating the documented listening in the Study Area.

^{36/} Average Quarter Hour (“AQH”) is defined by Nielsen as “The number of persons or households estimated to be tuned to a specific channel or program for at least five minutes during an average fifteen minute period.” See <http://www.nielsenmedia.com/glossary/index.htm>.

^{37/} Reach is defined by Nielsen as “the unduplicated number of individuals or households exposed to an advertising medium at least once during the average week for a reported time period.” See *id.*

respondents who tuned into WBZY(FM) at least once during the survey week. The other sample stations studied at Exhibit A likewise show substantial audience in their respective Study Area.

Under the Aztec Petition proposal, these Study Area listeners of WBZY(FM), as with the other examples at Exhibit A, would have no recourse from interference from a fill-in FM translator. ^{38/} Such listeners are undeniably not in “distant” locations, as presumed by Aztec. Moreover, these listeners will be dissuaded from tuning into the FM dial, as many have been from the AM dial, by the increased interference emanating from FM translators. The FM band does not need to go the way of the AM band, which continues to suffer from inter-station interference. Furthermore, for an industry facing competition for listeners and advertisers from media not even contemplated in 1970, or even 1990, full service FM stations cannot take the economic hit to their audience ratings that the Aztec Petition proposal would unleash.

G. Petitioner’s Interference Proceeding is Not a Justification for a Wholesale Change in the Secondary Status of Fill-In FM Translators

Aztec complains that, as an FM translator permittee facing Section 74.1204(f) objections, it had to address what it terms “distant” listening to a full service FM station, WVLT(FM), Vineland, New Jersey. ^{39/} It is clear from the terminology used by Aztec, always calling the complainants “purported listeners,” and even suggesting collusion by these listeners

^{38/} Furthermore, the Audio Division’s complaint files are replete with interference complaints from multitudes of dedicated, regular listeners to a full service station where their listening was located outside the “protected service contour.” *See, e.g.*, Complaints from listeners of WKMK(FM), Eatontown, NJ, regarding FM translator W292DV, New York, NY, FCC Facility ID No. 155888. That these listeners were willing to take the time to complain about interference further proves the value to the public and to the impacted stations of a full service station’s signal reach outside the theoretical contour border so emphasized by Aztec.

^{39/} *See* Aztec Petition at 5-6.

“in conjunction with the distant station,” 40/ that Aztec will try every trick in the book to evade its non-interference obligation. Clearly, Aztec’s goal, both in responding to the WVLT(FM) objections, and its proposals contained in its Petition, is to back the Commission off its rules enforcing the secondary status of FM translators as it applies to Aztec’s type of FM translator. 41/ Aztec’s grievance with obeying clear-cut Commission rules to promote a clear-cut Commission policy does not warrant the wholesale change in the relationship of FM translators to other stations as propounded in the Aztec Petition. 42/

40/ *See id.*

41/ In any event, Aztec has been granted authority to modify its FM translator to a different channel, mooting the WVLT(FM) Section 74.1204(f) objections. *See* Letter from Peter H. Doyle to Erwin G. Krasnow, Esq., John F. Garziglia, Esq. and Radio Sharon Broadcasting, LLC, FCC File Nos. BMPFT-20160129ALD, BMPFT-20160728AAW, BMPFT-20170410AAD (May 1, 2017). While one might assume that this change of events could cool Aztec’s ardor for its Petition proposals, Aztec, as proxy, might continue its participation, given that Aztec’s counsel has raised similar arguments in another proceeding. *See* Application for Review, Radio One of Indiana, LLC, FCC File No. BLFT-20151120AGX, FCC Facility ID No. 143744.

42/ Aztec also devotes a page and-a-half of its Petition to a discussion of the Local Community Radio Act of 2010, 111th Congress Public Law 371 (Pub.L. 111-371) (“LCRA”), yet concedes at the end “nor is Petitioner suggesting that the FM translator rules be modified” to tract identically the interference rules for low power FM (“LPFM”) stations; only that the provisions of LCRA “should be instructive to the FCC” in the admittedly-distinguishable FM translator context. *See* Aztec Petition at 7-8. In any event, when Congress through LCRA instructed that FM translator stations and LPFMs should remain equal in status, that plain language instruction applies to FM translator vis-a-vis LPFM contexts, not FM translator vis-a-vis full service FM stations. *See* LCRA Section 5. Also overlooked by Aztec is that same Section 5 of LCRA endorses the Commission’s fundamental policy – the one that Aztec seeks to overturn – that FM translator stations remain secondary to existing and modified full-service FM stations. *See id.* (“**FM translator stations**, FM booster stations, and low- power FM stations **remain** equal in status and **secondary to existing and modified full-service FM stations.**”) (emphasis added).

II. THE AZTEC PETITION PROPOSAL IS NOT THE PROPER PROCEEDING TO IMPROVE THE COMMISSION'S PROCESS FOR FM TRANSLATOR INTERFERENCE COMPLAINTS

Aztec attempts to bolster its argument for a radical change in the secondary status of FM translators by citing to its perceived frustrations with the current Audio Division process for handling interference complaints due to FM translator operations. ^{43/} While Aztec views the complaint process with an overly negative outlook, no doubt improvements to the complaint process would prove beneficial for the Commission staff, complaining listeners, affected stations and FM translators, alike.

However, there are far better solutions to improving the FM translator complainant process than the adoption of the Aztec Petition proposal. Indeed, adopting the Aztec “solution” would be a proverbial act of throwing out the baby with the bathwater by condemning regular listeners of full service FM stations to unrectified FM translator interference. Instead of Aztec’s drastic undermining of the secondary status of FM translators, the answer is to reform the complaint process to make it more efficient, swift and predictable. This ill-advised Aztec Petition proceeding is not the appropriate forum for improvements in the FM translator complaint process.

III. CONCLUSION

The Commission wisely made FM translators a secondary service to full service FM stations, adopting rules that require the prevention or remediation of interference to all regular listeners of full service FM stations, no matter the location of such listening. Aztec’s proposal for a wholesale change in this system would unleash interference to full service FM station listeners to the detriment of those listeners, to the detriment of the integrity of the

^{43/} See Aztec Petition at 8-9.

FM band, and to the detriment of the economic vitality of full service FM stations meeting the Commission's public service mandates. Reforms to the complaint process for FM translator interference are best considered in a rule making proceeding focused on specific reforms that respect the secondary status of FM translators, not in a rule making based on Aztec's ill-conceived and self-serving proposal.

Respectfully submitted,

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EXHIBIT A

Figure A-1

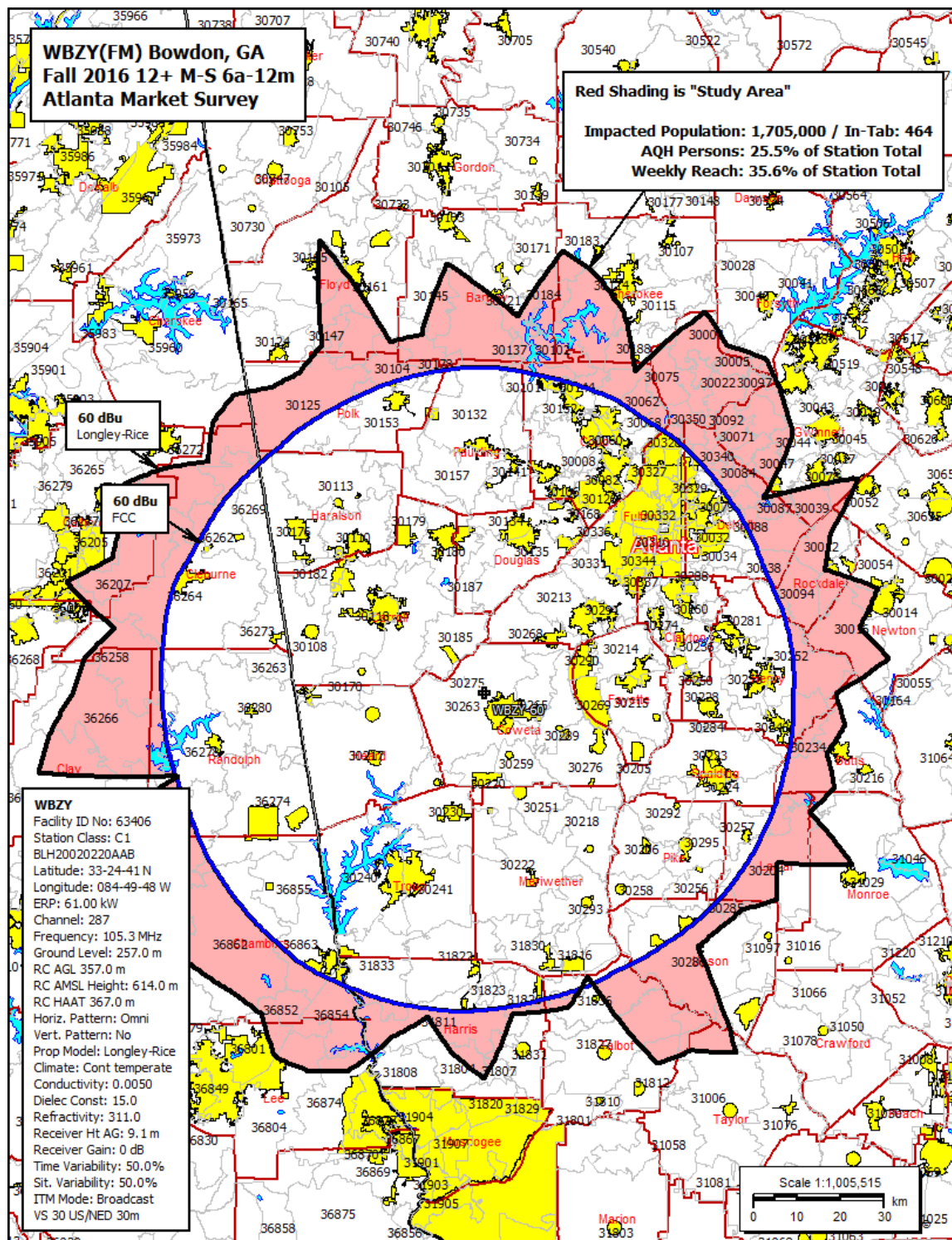


Figure A-2

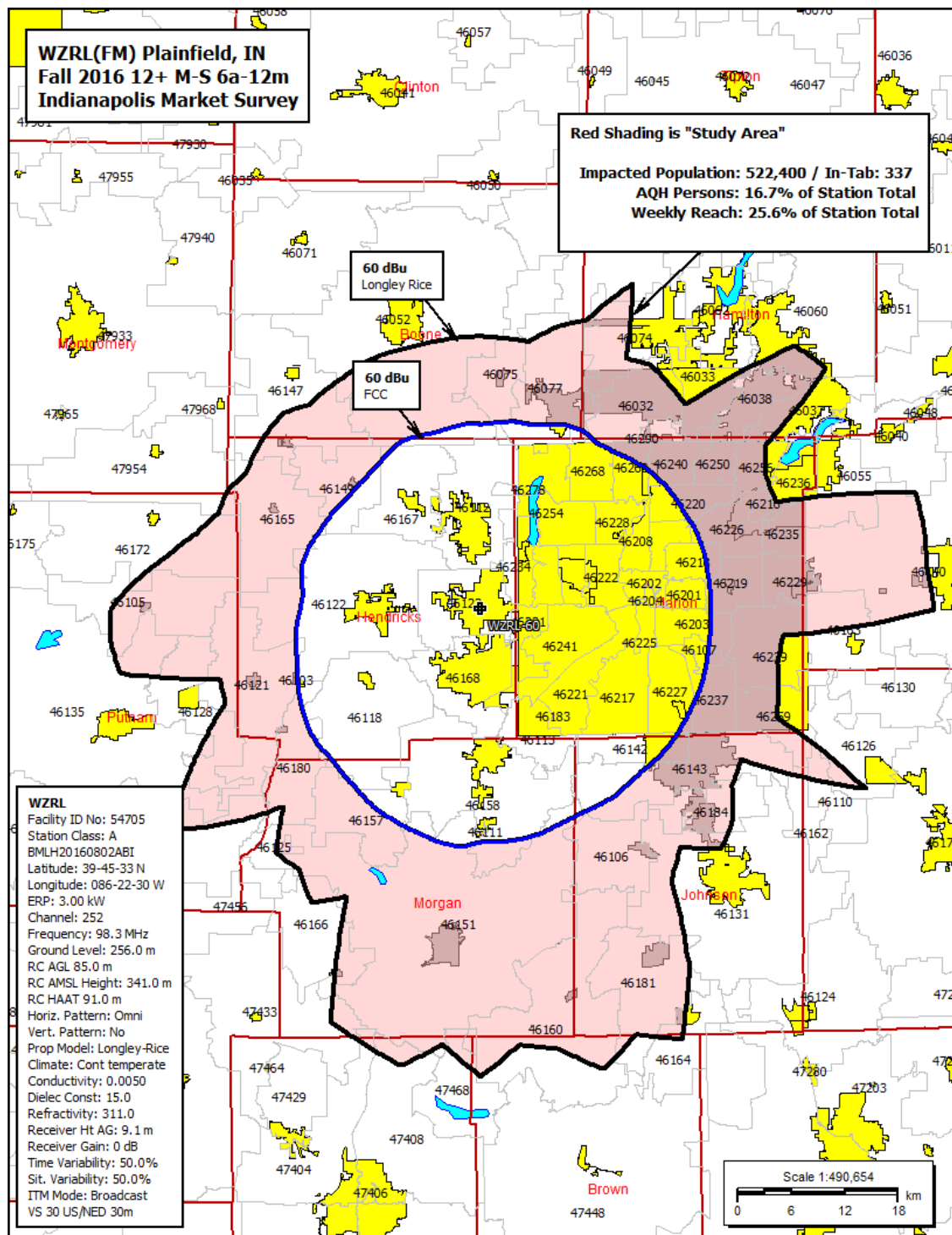


Figure A-3

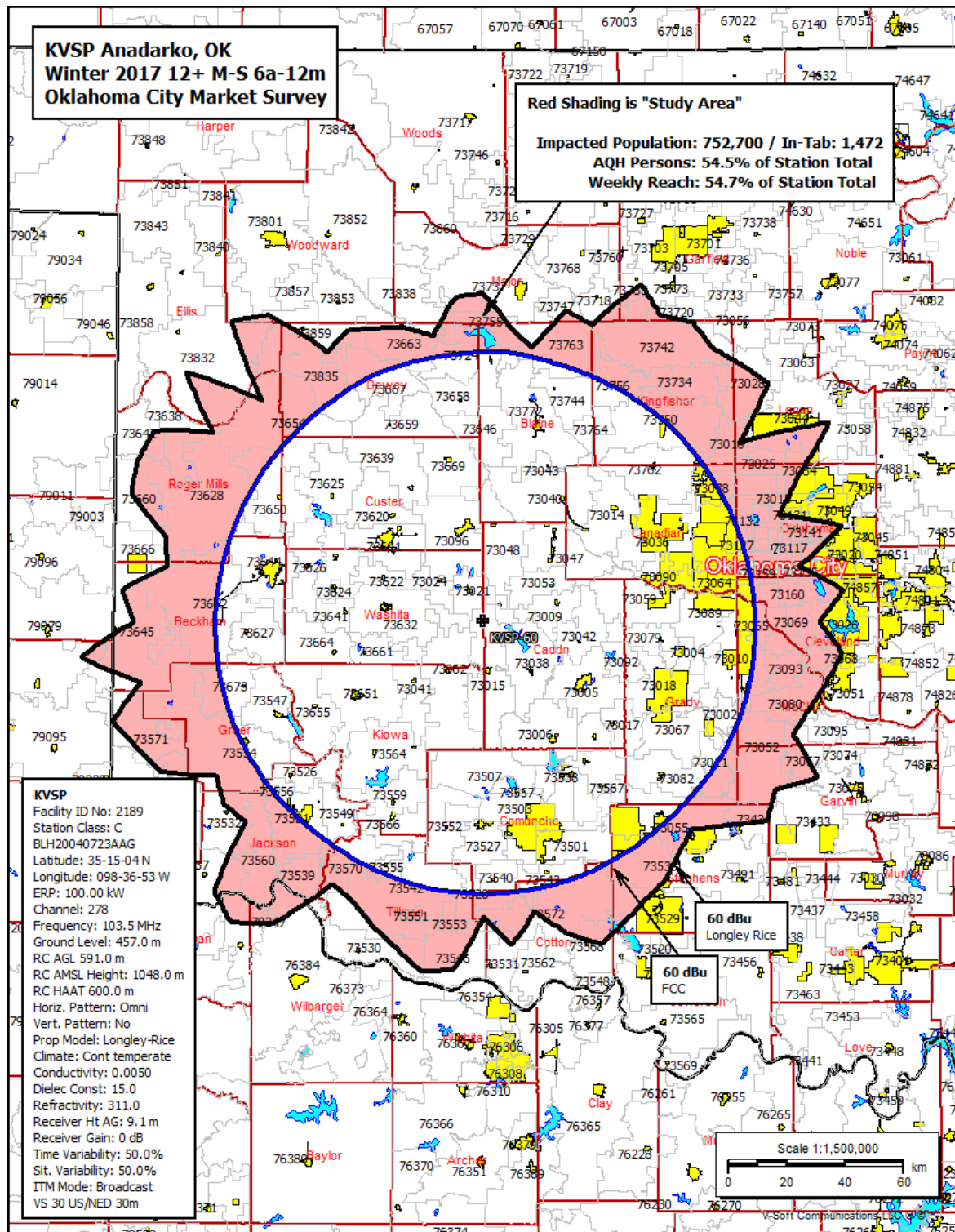
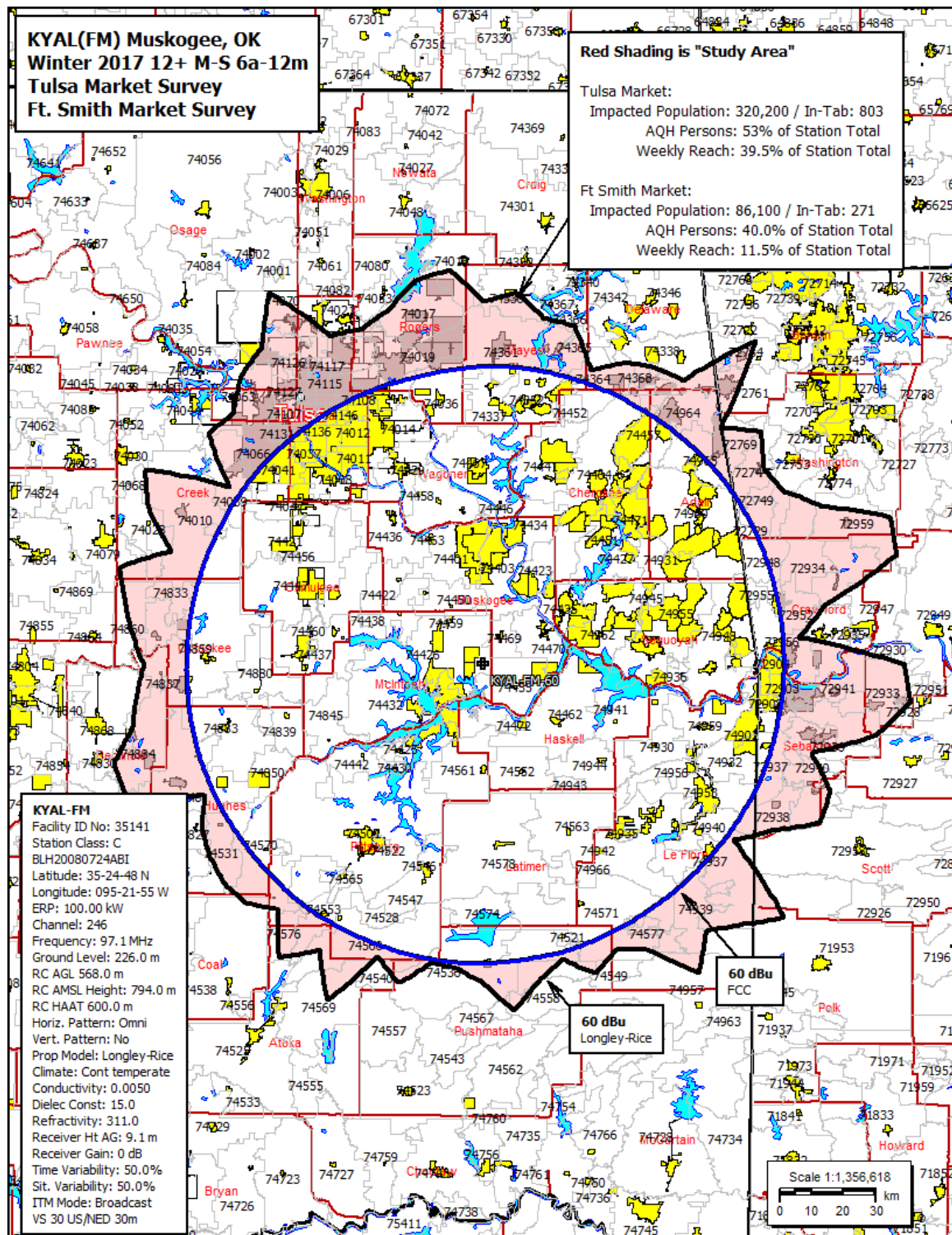


Figure A-4



CERTIFICATE OF SERVICE

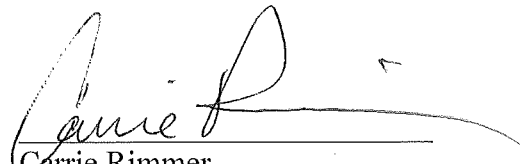
I, Carrie Rimmer, do hereby certify that a copy of the foregoing Joint Statement of Broadcasters in Opposition to Petition for Rule Making is being sent via first-class, U.S. Mail, postage prepaid, this 18th day of May, 2017, to the following:

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